

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

PERRY PIERCE,

Plaintiff

v

Case No. 1:22-cv-863

Sally J. Berens, U.S. Magistrate Judge

K. ROBBINSON,

Defendants

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**DEFENDANT SGT. KRISTIN ROBBINS' MOTION TO DISMISS PLAINTIFF'S
AMENDED COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Defendant, SGT. KRISTIN ROBBINS, by and through counsel, STRAUB, SEAMAN & ALLEN, P.C., hereby moves, under Federal Rule of Civil Procedure 12(b)(6), to dismiss Plaintiff's Amended Complaint.

This lawsuit arises from an altercation which occurred at the Berrien County Jail on January 29, 2022. Plaintiff claims that Sgt. Robbins used excessive force when she deployed a brief dose of pepper spray. Sgt. Robbins respectfully contends that the allegations fail to state a claim upon which relief can be granted because qualified immunity applies to bar Plaintiff's claim. Plaintiff's allegations and the video evidence (of which the plaintiff references and relies upon as

support for his claims in the Amended Complaint) demonstrate that no constitutional violation occurred. Even if Plaintiff could prove a constitutional violation, Plaintiff cannot demonstrate a clearly-established right to be free from a brief dose of pepper spray under the circumstances alleged. Further, the video shows that Plaintiff suffered only *de minimis* ordinary discomfort at best which is insufficient to support a claim for excessive force. Under these circumstances, Plaintiff cannot establish a viable claim for excessive force against Sgt. Robbins.

Consistent with W.D. Mich. LCivR 7.1(d), counsel for Defendants contacted Plaintiff's counsel to seek concurrence with the instant motion and relief sought. Plaintiff's counsel did not concur.

For these reasons, as further developed in the attached Brief in Support, Sgt. Robbins respectfully requests that this Honorable Court grant her motion and dismiss Plaintiff's Amended Complaint with prejudice and such other relief as this Court deems proper.

Respectfully submitted,

Dated: April 28, 2023

STRAUB, SEAMAN & ALLEN, P.C.

/s/ James T. McGovern

James T. McGovern (P79410)

Attorney for Defendant Sgt. K Robbins

PROOF OF SERVICE

The undersigned hereby certifies that on the 28th day of April, 2023, I electronically filed the foregoing document with the Clerk of the Court using the Electronic Case Filing System, which sent notification of such filing to all counsel of record registered to receive the same.

/s/ Denise A. Van Hoven

Denise A. Van Hoven

Legal Assistant to James T. McGovern